HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE
AND
HON'BLE SHRI JUSTICE C.V.NAGARJUNA REDDY

WRIT PETITION No.16749 of 2007

Between:

M/s. Sujana Universal Industries Limited,
represented by its Director.

… Petitioner

And

Commercial Tax Officer,
Srinagar Colony Circle, Panjagutta Division,
Hyderabad. …Respondent

:: O R D E R ::

Counsel for the petitioner : Sri E. Manohar, Senior Advocate
assisted by Sri A. Sudershan Reddy

Counsel for the respondent : Sri K. Raji Reddy,
Special Standing Counsel for
Commercial Taxes

7th August, 2007

Per G.S. SINGHVI, C.J.

This petition is directed against order dated 31-3-2007 passed by Commercial Tax Officer, Srinagar Colony Circle, Hyderabad (the respondent herein), whereby he created tax liability of Rs.9,23,01,153/- against the petitioner under the Andhra Pradesh General Sales Tax Act, 1957 (for short, 'the Act') for the assessment year 2003-2004.

The petitioner is engaged in the business of manufacture and sale of iron and steel, billets, bearings, ceiling fans etc. It is registered as a dealer under the Act. For the assessment year 2003-2004, the petitioner filed return and disclosed net turnover of Rs.73,06,814/-. The respondent did not accept the return and issued show cause notice dated 9-1-2007 to the petitioner requiring it to file objections against the proposed rejection of its claim for exemption in relation to various items including second sales of iron and steel on the ground that the same were not supported by any documentary evidence to show that the goods suffered tax in terms of Section 7-A of the Act. The petitioner filed reply-cum-objections dated 27-3-2007 and produced purchase bill No., date, name and address of the seller, his APGST Registration Certificate No. etc. After considering the same, the respondent passed the impugned order and confirmed the proposal contained in the show cause notice. He referred to amended Section 7-A of the Act, the objections filed by the petitioner and held that the claim for exemption is unsustainable because the second sales of iron and steel is not supported by any document evidencing that they have suffered tax at the rate of 4%.

Sri E. Manohar, learned Senior Counsel appearing for the petitioner fairly conceded that his client can challenge the order of assessment by filing an appeal under Section 19 of the Act, but argued that it may not be compelled to adopt that course because the order impugned in the writ petition is not only contrary to the law laid down

by this Court in **Bandamidi Rajaiah & Sons v. Board of Revenue**[1], **State of A.P. v. Thungabhadra Industries Ltd.**[2] and **M/s. Machilipatnam Consumer Cooperative Society Ltd. v. The State of A.P.**[3], but is also violative of the rules of natural justice inasmuch as the same does not contain reasons for rejecting the petitioner's claim for exemption. Learned Senior Counsel emphasised that recording of reasons and communication thereof is sine qua non for a valid quasi judicial order and argued that failure of the respondent to advert to the documentary evidence produced by the petitioner and decide its claim for exemption by assigning cogent reasons should be treated sufficient for quashing the order under challenge.

Learned Special Standing Counsel for Commercial Taxes submitted that the remedy of appeal, which forms part of the scheme of the Act, should be treated as an effective alternative remedy and the petitioner should be non-suited because it has failed to avail that remedy. Learned counsel pointed out that the petitioner did not produce any evidence to show that the first sales had suffered tax in accordance with the provisions of the Act and argued that the impugned order cannot be castigated as non-speaking.

We have considered the respective submissions and perused the record. It is settled law that in exercise of power under Article 226 of the Constitution, the High Court will not entertain writ petition if an effective alternative remedy is available to the petitioner. The rule of alternative remedy, which is one of the several rules of self-imposed restraint, evolved by the superior Courts has been applied by the Courts with great rigor in cases involving levy and recovery of taxes. It has been consistently held that the statutory remedies of appeal and revision available under an enactment, which empowers the competent authority to make assessment and/or levy and collect taxes should normally be treated as an effective alternative remedy and the High Court should be extremely slow to directly entertain writ petition

in such matters. In **A.V. Venkateshwaran v. R.S. Wadhwani**[4], the Constitution Bench of the Supreme Court, while reiterating that the rule of alternative remedy does not bar the jurisdiction of the High Court to entertain the writ petition, but is a rule evolved by the superior Courts for exercise of their discretion, observed as under:

> "The wide proposition that the existence of an alternative remedy is a bar to the entertainment of a petition under Art.226 of the Constitution unless (1) there was a complete lack of jurisdiction in the officer or authority to take the action impugned, or (2) where the order prejudicial to the writ petitioner has been passed in violation of the principles of natural justice and could, therefore, be treated as void or non est and that in all other cases, Courts should not entertain petitions under Art. 226, or in any event not grant any relief to such petitioners cannot be accepted. The two exceptions to the normal rule as to the effect of the existence of an adequate alternative remedy are by no means exhaustive, and even beyond them a discretion vests in the High Court to entertain the petition and grant the petitioner relief notwithstanding the existence of an alternative remedy. The broad lines of the general principles on which the Court should act having been clearly laid down, their application to the facts of each particular case must necessarily be dependent on a variety of individual facts which must govern the proper exercise of the discretion of the court, and in a matter which is thus pre-eminently one of discretion, it is not possible or even if it were, it would not be desirable to lay down inflexible rules which should be applied with rigidity in every case which comes up before the court."

In **Thansingh Nathmal v. Superintendent of Taxes**[5], another Constitution Bench of the Supreme Court considered the question relating to exercise of discretion by the High Court in entertaining a writ petition despite the availability of alternative remedy and held:

> "The jurisdiction of the High Court under Article 226 of the Constitution is couched in wide terms and the exercise thereof is not subject to any restrictions except the territorial restrictions which are expressly provided in the Articles. But the exercise of the jurisdiction is discretionary: it is not exercised merely because it is lawful to do so. The very amplitude of the jurisdiction demands that it will ordinarily be exercised subject to certain self-imposed limitations. Resort that jurisdiction is not intended as an alternative remedy for relief which may be obtained in a suit or other mode prescribed by statute. Ordinarily the Court will not entertain a petition for a writ under

Article 226, where the petitioner has an alternative remedy, which without being unduly onerous, provides an equally efficacious remedy. Again the High Court does not generally enter upon a determination of questions which demand an elaborate examination of evidence to establish the right to enforce which the writ is claimed. The High Court does not therefore act as a court of appeal against the decision of a court or tribunal, to correct errors of fact, and does not by assuming jurisdiction under Article 226 trench upon an alternative remedy provided by statute for obtaining relief. Where it is open to the aggrieved petitioner to move another tribunal, or even itself in another jurisdiction for obtaining redress in the manner provided by a statute, the High Court normally will not permit by entertaining a petition under Article 226 of the Constitution the machinery created under the statute to be bypassed, and will leave the party applying to it to seek resort to the machinery so set up."

In **Baburam v. Zilla Parishad**[6], the Supreme Court reiterated the rule of alternative remedy in the following words:

"When an alternative and equally efficacious remedy is open to a litigant he should be required to pursue that remedy and not to invoke the special jurisdiction of the High Court to issue a prerogative writ. It is true that the existence of a statutory remedy does not affect the jurisdiction of the High Court to issue a writ. But, the existence of an adequate legal remedy is a thing to be taken into consideration in the matter of granting writs and where such a remedy exists it will be a sound exercise of discretion to refuse to interfere in a writ petition unless there are good grounds therefor. But it should be remembered that the rule of exhaustion of statutory remedies before a writ is granted is a rule of self imposed limitation, a rule of policy, and discretion rather than a rule of law and the Court may therefore in exceptional cases issue a writ such as a writ of certiorari, notwithstanding the fact that the statutory remedies have not been exhausted."

Their Lordships then carved out the following two exceptions to the rule of alternative remedy:

1) where proceedings are taken before a Tribunal under a provision of law, which is ultra vires to the Constitution,
2) where the impugned order has been made in violation of the rules of natural justice.

In **Titaghur Paper Mills Co. Ltd. v. State of Orissa**[7], the

Supreme Court stated the rule of alternative remedy in the following words:

> "Where a right or liability is created by a statute which gives a special remedy for enforcing it, the remedy provided by that statute alone must be availed of. Under the scheme of the Orissa Sales Tax Act, there is a hierarchy of authorities for granting redress. The petitioners had an equally efficacious alternative remedy by way of an appeal to the Prescribed Authority under sub-section (1) of Section 23, then a second appeal to the Tribunal under sub-section (3)(a) thereof, and thereafter in the event the petitioners get no relief, to have the case stated to the High Court under Section 24 of the Act. The Act provides for an adequate safeguard against an arbitrary or unjust assessment, such as right to prefer appeal under Section 23 (1) and to apply for stay of recovery under clause (a) of the second proviso to Section 13 (5). Thus the Act provides for a complete machinery to challenge an order of assessment, and the impugned orders of assessment can only be challenged by the mode prescribed by the Act and not by a petition under Article 226."

In **Champa Lal v. I.T. Commissioner**[8], **J.M. & Co. v. Agricultural I.T. Officer, Assam**[9], **C.I.T. v. Ramendra Nath Ghosh**[10], **Swadeshi Cotton Mills Co. Ltd., v. Union of India**[11], **Gujarat University v. N.U. Rajguru**[12], **State of H.P. v. Raja Mahendra Pal**[13], **L.L. Sudhakar Reddy v. State of A.P.**[14], **State of Bihar v. Jain Plastics & Chemicals Ltd.,**[15], **Harbanslal Sahnia v. Indian Oil Corporation Ltd.,**[16], **ABL International Ltd., v. Export Credit Guarantee Corporation of India Ltd.,**[17] the Supreme Court applied the rule of alternative remedy in different situations. In **Harbanslal Sahnia** (supra), the Supreme Court considered the situations in which the High Court can exercise power under Article 226 of the Constitution of India notwithstanding the availability of alternative remedy and held:

> "The rule of exclusion of writ jurisdiction by availability of an alternative remedy is a rule of discretion and not one of compulsion. In an appropriate case, in spite of availability of the alternative

remedy, the High Court may still exercise its writ jurisdiction in at least three contingencies: i) where the writ petition seeks enforcement of any of the fundamental rights; (ii) where there is failure of principles of natural justice; or (iii) where the orders or proceedings are wholly without jurisdiction or the vires of an Act is challenged. (See **Whirlpool Corpn. v. Registrar of Trade Marks {(1998) 8 SCC 1}**. The present case attracts applicability of the first two contingencies. Moreover, as noted, the petitioners' dealership, which is their bread and butter, came to be terminated for an irrelevant and non-existent cause. In such circumstances, we feel that the appellants should have been allowed relief by the High Court itself instead of driving them to the need of initiating arbitration proceedings."

In **Central Coalfields Ltd. v. State of Jharkhand**[18], the Supreme Court approved the judgment of the High Court of Jharkhand, which refused to interfere with the order passed by the competent authority under the Bihar and Orissa Public Demands Recovery Act, 1914 on the ground of availability of alternative remedy and observed:

"……It is no doubt true that according to the appellant Company the certificate proceedings could not have been initiated under the Bihar and Orissa Public Demands Recovery Act, 1914, in view of the provisions of the Coal Bearing Areas (Acquisition and Development) Act, 1957, the Mines and Minerals (Regulation and Development) Act, 1957 and also the Coking Coal Mines (Nationalisation) Act, 1972. But it also cannot be overlooked that the action has been taken under the Bihar and Orissa Public Demands Recovery Act, 1914 and the appellant Company was directed to make payment. The said order is subject to appeal under Section 60 of the said Act. A reading of the order dated 17-11-1999 passed by the Certificate Officer makes it clear that before taking the action, an opinion of the Advocate General of the State of Bihar was sought by the respondent. Referring to the provisions of the Coking Coal Mines (Nationalisation) Act, 1972, the Advocate General opined that such amount could be claimed by the State Government from the appellant Company. Reference was made to Sections 6 and 7 of the said Act and it was observed that the State Government had power to make demand of rent from the appellant Company. In view of the above position, it cannot be said that the learned Single Judge as well as the Division Bench had committed an error of law in dismissing the petitions and appeals by allowing the appellant to avail of an alternative remedy of filing appeals……"

The petitioner's case does not fall in any of the three exceptions enumerated in the judgments of the Supreme Court. It is neither the pleaded case of the petitioner nor the learned counsel argued that the respondent did not have the jurisdiction to decide the issue of exemption or that the Act is ultra vires the provisions of the Constitution or the assessment made by the respondent is violative of any of the petitioner's fundamental right guaranteed under Part-III of the Constitution. Therefore, it cannot be said that the remedy of appeal available to the petitioner is not an effective alternative remedy.

The question whether the order under challenge can be treated as totally non-speaking order is highly debatable. Even if one may think that more detailed reasons should have been assigned by the respondent while rejecting the petitioner's claim for exemption, it cannot be said that the order is totally bereft of reasons. The respondent did take cognizance of the assertion contained in the objections filed by the petitioner and observed:

> "A plain reading of the above provision clearly lays down that the assessee not only discharge the burden of furnishing the particulars such as name of the purchaser, Registration number, purchase invoice number, etc. from the registered dealers in the State for the purpose of claiming exemption on 2nd sales, but should also discharge the burden of proving that the goods in fact, suffered tax at the earlier point of sale. Therefore, the judgments, ipso facto are not applicable to the facts in the case of the assessee.
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> In view of the above, the objections filed by the assessee relating to alleged 2nd sales of Iron & Steel are rejected and the levy of tax proposed is confirmed."

It is, thus, evident that the officer concerned had considered the objection raised by the petitioner and decided the same by assigning reasons.

The three judgments of this Court on which reliance has been placed by Shri E. Manohar do not have any bearing on the petitioner's case because in none of them the issue of alternative remedy was discussed and decided. Therefore, we do not consider it necessary to

deal with the same.

In the result, the writ petition is dismissed leaving the petitioner free to avail remedy by filing appeal. Since the petitioner has sought intervention of the Court, we give it liberty to file appeal within a period of 15 days along with an application for condonation of delay and direct that the same shall be entertained, considered and decided on merits.

As a sequel to dismissal of the writ petition, WPMP.No.21355 of 2007 filed by the petitioner for interim relief is also dismissed.

G.S. SINGHVI, C.J.

7th August, 2007

C.V. NAGARJUNA REDDY, J.

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[1] (1978) 42 STC 145
[2] (1986) 62 STC 71
[3] (1988) 7 APSTJ 218
[4] AIR 1961 SC 1506
[5] AIR 1964 SC 1419
[6] AIR 1969 SC 556
[7] (1983) 2 SCC 433
[8] AIR 1970 SC 645
[9] AIR 1970 SC 1980
[10] (1972) 4 SCC 379
[11] AIR 1981 SC 818
[12] AIR 1988 SC 66
[13] (1999) 4 SCC 43
[14] (2001) 6 SCC 634
[15] (2002) 1 SCC 216
[16] (2003) 2 SCC 107
[17] (2004) 3 SCC 553

[18] (2005) 7 SCC 492